

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILMER B. GAY,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
ROBERT D. SHANNON, et al.,	:	NO. 02-CV-4693
Defendants	:	

**ORDER**

AND NOW, this            day of            , 2005, upon  
consideration of Plaintiff's Motion for Judicial Notice of Video Deposition  
Convened June 10, 2005, and Major Mooney's Response thereto, it is  
hereby ORDERED that Plaintiff's Motion is DENIED.

BY THE COURT:

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NORMA L. SHAPIRO,            S.J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILMER B. GAY,	:	CIVIL ACTION
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	:	
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	:	
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Defendants	:	

**RESPONSE TO PLAINTIFF'S MOTION FOR JUDICIAL NOTICE OF  
VIDEO DEPOSITION CONVENED JUNE 10, 2005**

Plaintiff is correct that he received a facsimile of the Mooney Investigative Report on the day of the deposition, but that is only part of the story. Plaintiff was mailed a copy of the Investigative Report – in addition to other discovery responses – by overnight mail, well in advance of the deposition. The undersigned was surprised to learn that, prior to the deposition, the package had not yet arrived at the Institution. It was for this reason that the Report was faxed. This logistical problem was unfortunate for all parties and had no roots in deception of any kind. More importantly, Plaintiff admits that he was provided as much time as he needed to perform a meticulous review of the Report (that he was already familiar with) prior to going on the record. Once on the record, plaintiff and the undersigned went page-by-page to confirm that our copies were identical.

Plaintiff is also correct that the copy of the sketch in question that he received, which was part of the Report, did not distinguish between black and blue ink. Neither did mine. No copies would. However, not

only are plaintiff's challenges to the authenticity of the sketch well-documented in his First Amended Complaint, he was given the opportunity on the record to delineate exactly what parts of the sketch were drawn by him and what parts were added by some unknown person at some unknown time. Thus, plaintiff suffered no injury by receiving a copy of the Report (that he was already familiar with) prior to the deposition. Finally, a copy of the deposition transcripts will be attached to Major Mooney's summary judgment motion so he will be provided the transcripts when he receives his copy of the motion.

Accordingly, Plaintiff's Motion for Judicial Notice should be DENIED as set forth in the proposed Order.

THOMAS W. CORBETT, JR.  
ATTORNEY GENERAL

BY: /s/ Patrick J. McMonagle  
Patrick J. McMonagle  
Deputy Attorney General  
Identification No. 83890

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Susan J. Forney  
Chief Deputy Attorney General  
Chief, Litigation Section

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**CERTIFICATE OF SERVICE**

I, Patrick J. McMonagle, Deputy Attorney General, hereby certify that a true and correct copy of the Commonwealth Defendant's Response in Opposition to Plaintiff's Motion for Judicial Notice was filed electronically and is available for viewing and downloading from the ECF system as of June 15, 2005. I further certify that a true and correct copy of said document was mailed on June 15, 2005:

Wilmer Gay  
Inmate AF-2709  
State Correctional Institution - Huntingdon  
1100 Pike Street  
Huntingdon, PA 16654-1112

THOMAS W. CORBETT, JR.  
ATTORNEY GENERAL

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